

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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KIMOTHY ZIMMERMAN,

Plaintiff,

DECISION AND ORDER

01-CV-6168L

V.

JOANNE BARNHART, Commissioner of Social  
Security,<sup>1</sup>

Defendant.

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On October 26, 2005, plaintiff, in this action for Social Security benefits, moved for an order awarding attorney's fees pursuant to 42 U.S.C. § 406(b)(1). (Dkt. #18). Plaintiff's attorney seeks fees in the amount of \$9,335.20 on the basis of a contingent-fee agreement between plaintiff and plaintiff's attorney, William J. McDonald, Jr., Esq. By letter dated November 22, 2005, defendant JoAnne B. Barnhart, Commissioner of Social Security, advised that she does not oppose the motion. (Dkt. #20).

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<sup>1</sup> Plaintiff's complaint names former acting Commissioner of Social Security William A. Halter. Jo Anne B. Barnhart, the current Commissioner, is automatically substituted as defendant pursuant to Fed. R. Civ. P. 25(d)(1).

The Court has reviewed plaintiff's motion and the contingent-fee agreement between plaintiff and counsel. I find that the agreement and the requested award are reasonable under 42 U.S.C. § 406(b)(1)(A) and *Gisbrecht v. Barnhart*, 535 U.S. 789, 808 (2002).

Accordingly, plaintiff's motion (Dkt. #18) for attorney's fees in the amount of \$9,335.20 pursuant to 42 U.S.C. §406(b)(1) is **GRANTED**. The award is to be made payable to William J. McDonald, Jr., Esq., attorney for plaintiff. Upon receipt of this award, McDonald is ordered to pay to the plaintiff, Kimothy Zimmerman, \$3,803.30, which is the amount of the previous award of counsel fees pursuant to the equal Access to Justice Act.

IT IS SO ORDERED.



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DAVID G. LARIMER  
United States District Judge

Dated: Rochester, New York  
November 28, 2005.